ISDA Safe, Efficient Markets

Stephen McGoldrick
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

6 March 2024

Sent via email: CP23-32@fca.org.uk

Dear Stephen,

**Response to FCA CP23/32: Improving transparency for bond and derivatives markets**

The International Swaps and Derivatives Association, Inc. (**ISDA**)[1] welcomes the opportunity to respond to the FCA's CP23/32.

**Overview and summary**

We welcome the opportunity to respond to this consultation and contribute to the reform of the UK transparency regime for OTC derivatives. We would like to highlight the following key points in our response:

**Category 2 instruments and trading venue transparency**

We note the FCA's proposal to categorise OTC derivatives into Category 1 instruments (broadly, the most liquid instruments) and Category 2 instruments (less liquid instruments that are traded on a UK venue) and that trading venues would be required to calibrate post-trade deferrals themselves for Category 2 instruments (albeit applying specified criteria).

ISDA firstly expresses surprise that proposals which originally pertained to exchange-traded derivatives ("ETDs") are now being extended to OTC derivatives, without prior consultation. Our members' preference is that certain OTC derivatives are subject to the FCA transparency rules as detailed in Category 1 and that Category 2 is confined to ETDs.

Should Category 2 include those OTC derivatives traded on a trading venue then members express a strong preference for consistency and alignment across the trading venues. We

[1] **About ISDA**

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on X, LinkedIn, Facebook and YouTube.

support the UK Finance response which states that the venues should not have discretion over the calibration of the transparency regime for OTC derivatives. We too propose that trading venues should have to work with market participants that are risk takers (possibly through a stakeholder group) to calibrate the transparency regime. Our members also feel that there should be some FCA involvement in the calibration of the transparency requirements for Category 2 OTC derivative instruments, such as through direct FCA involvement in venues' engagement with risk takers trading on their system, or through appropriate supervision and enforcement. The FCA should produce a minimum standard which each trading venue should comply with for in scope OTC derivatives (for example, this would include ensuring some level of consistency of deferrals across products, the requirement on trading venues to consult with their members/users before making substantive changes and ensuring reasonable implementation times). Regardless, the transparency regime for Category 2 should never be more transparent than that for Category 1: the minimum length of deferral a trading venue can impose must always be greater than the maximum Category 1 deferral.

**Trading venue pre-trade transparency requirements**

Pre-trade requirements for voice and RFQ systems should be removed entirely. As currently drafted in MAR 11.2.3R, voice and RFQ systems would remain subject to pre-trade requirements in some circumstances, namely 'if the characteristics of the price discovery mechanism so permit'. We do not agree that relevant venues should be left to decide, on a case-by-case basis, whether pre-trade reporting is warranted and, if so, what 'adequate information' should be disclosed.

The FCA table in MAR 11.2.3R should be amended by deleting the final row (Trading system not covered above). We also propose that the FCA explicitly confirm (including in the rules relating to quote-driven systems in MAR 11.2.3R) that pre-trade transparency requirements do not apply to voice/RFQ venues.

**Deferrals**

ISDA are supportive of more transparency in derivatives markets, however it is imperative the framework is calibrated appropriately. Our members are concerned about the length of the proposed post-trade deferrals for interest rate swaps and are concerned that they could adversely impact execution for UK hedging interest rate risk as:

- Publishing the price of a block trade EOD, as proposed in the FCA's Model 2 (or even T+3 per proposed Model 1) would expose liquidity providers to undue risk, as they usually hold risk for much longer periods than the proposed deferral periods. If the rules were implemented as proposed, pricing of larger size trades would deteriorate notably to compensate for the information leakage to the market.

- Publishing price (even with a volume cap) would allow the market to infer the direction of the trade. This will impact the firms' ability to provide liquidity in large sizes as any residual position at the time of price disclosure would essentially be transparent to the market.

- The scope of instruments subject to transparency includes broken dated swaps, which means longer deferrals are needed and the data quality of the transparent market will be poorer than otherwise, if only benchmark tenors were in scope. Broken-dated swaps are by definition non-standard and illiquid, and reporting of transparency information in relation to these instruments will not add meaningfully to price transparency in interest rate swaps.

We would point out that, in considering any comparison with the CFTC SDR framework, that GBP swaps are less liquid than USD swaps and that longer deferrals are needed (even with lower block sizes).

We believe that there should be longer deferrals for large trades and smaller real-time size thresholds for GBP Swaps in order to avoid adverse impacts on pricing, which would be to the detriment of UK markets and investors.

**Instrument scope**

**Q2: Do you agree that the transparency regime should focus on the classes of derivatives subject to the clearing obligation? If not, please explain why.**

We propose that the transparency regime should focus on the classes of derivatives subject to the derivatives trading obligation, principally because these are the most liquid classes. However, even if the regime focusses on certain classes of derivatives subject to the clearing obligation, as detailed in this paper, with the exceptions detailed in this paper, then we would still question the inclusion of broken dated swaps, and the inclusion of tenors greater than 30Y.

There are four traded EURIBOR index tenors, namely 1m EURIBOR, 3m EURIBOR, 6m EURIBOR and 12m EURIBOR. Our members inform us that volume data across the different EURIBOR index tenors would most likely show that, at the very least, 1m EURIBOR and 12m EURIBOR should be allocated significantly different thresholds/deferrals or be excluded from the transparency regime altogether due to significantly lower volumes relative to the most liquid EURIBOR index tenor (EURIBOR 6m). Members highlight that EURIBOR is unlike SONIA, SOFR, ESTR and Fedfunds, all of which are overnight indices. See our response to Q25 and Q26 for further detail.

**Q3: Is the current level of transparency in FX derivatives and single-name CDS adequate? If not, should a subset of them be included as Category 1 instruments?**

We agree that FX derivatives and single-name CDS should not be included within the list of Category 1 instruments at this stage.

**Q4: Do you agree with excluding FRAs, basis swaps and OIS and Fixed-to-Float swaps with reference index other than EURIBOR, SONIA, €STR and FedFunds – from the list of Category 1 instruments? If not, please explain why.**

We agree that these instruments should be excluded from Category 1.

**Q5: Do you agree with including iTraxx Europe Main and iTraxx Europe Crossover as Category 1 instruments? If not, please explain why.**

Yes, we agree with the inclusion of iTraxx Europe Main and iTraxx Europe Crossover as Category 1 instruments and limiting this to the 5-year tenor and the on-the-run and first-off-the-run series.

**Tenors**

**Q6: Do you agree with our proposal to bucket swaps by tenors? If not, please explain why.**

We agree that swaps should be bucketed by tenors. We understand that the FCA has previously been looking at the duration risk (DVR1), which we believe is the right approach. However, if that is not attainable, tenors can be an acceptable compromise.

**Q7: Do you agree with our proposal to include spot and forward starting swaps within the same tenor bucket? If not, please explain why.**

We agree that spot and forward starting swaps can be within the same tenor bucket, as long as each is identified so that you can tell which is which – otherwise the data has very little value. They should be flagged as spot or forward starting,

**Q8: Do you agree with our proposed scope of Category 1 instruments for OTC derivatives? If not, please explain why.**

We note the proposed scope of Category 1 instruments up to the 50Y tenor point. However, as our ISDA data shows, anything beyond 30Y is generally illiquid. Looking at Table 5, which shows the average daily number of trades and traded notional, this decline in liquidity in the 30-to-50-year bracket can be clearly seen. For example, there is only one SOFR trade in this bracket. We question the benefits of extending the transparency regime beyond 30Y.

The FCA comments in the consultation paper (in paragraph 4.48) that "we expect liquidity in SOFR OIS to have increased since [the cessation date for USD LIBOR] in line with the increased adoption". However, we don't necessarily expect liquidity in SOFR OIS over 30Y to increase over Libor transition, because US Libor was not liquid after 30 years – we understand that the OSTTRA data for SOFR OIS (Q2 & Q3 2023 globally) shows that are just 7 tenor points with any trades in them over 30Y (to and including) 50Y. This is not a feature of a liquid market.

Limiting the scope of Category 1 instruments to the DTO would de-scope ESTR, SOFR and Fed Funds, although any or all of these could be added as and when they are also included in the DTO.

**Pre-trade transparency**

**Q9: Do you agree with our proposals for, and waivers of, pre-trade transparency? If not, please explain why.**

We note that the FCA’s intent is to remove the pre-trade transparency requirements for voice and RFQ systems, and we agree with that intent and thank the FCA for their recent confirmation that, coinciding with the commencement of the new non-equity transparency regime in MAR 11, Article 18 UK MiFIR will be amended as envisaged by FSMA 2023. We would ask the FCA to include this confirmation that there will be no SI-specific non-equity pre-trade transparency requirements once the new regime is in place in the policy statement.

However, rather than just removing the “detailed” pre-trade requirements for voice and RFQ systems, our members advocate for a complete removal of these requirements. We do not agree with leaving it for relevant trading venues to decide, on a case-by-case basis, whether pre-trade reporting is warranted, and, if so, what “adequate information” should be disclosed. Pre-trade data from voice/RFQ systems in respect of OTC derivatives does not generally support price formation nor indicate relevant pockets of liquidity due to the bespoke nature of the transactions.

We are concerned that allowing the proposed level of flexibility for individual venues to decide on pre-trade disclosures may simply exacerbate market fragmentation.

**Q10: Do you support our objective of enhancing price formation by prioritising the prompt dissemination of price information? If not, please explain why.**

We support the objective of enhancing price information by prioritising the prompt dissemination of price information, provided that liquidity providers are not exposed to undue risk as a result.

**Q11: Do you agree with our approach based on the dissemination of trade-by-trade information as opposed to aggregation of trades? If not, please explain why.**

Yes, we agree with your approach based on the dissemination of trade-by-trade information as this will contribute to more effective price formation.

**Q12: Should package trades be granted a minimum of a 15-minute reporting deferral to allow for the complexity of booking such trades?**

Yes, package trades should be granted a minimum of a 15-minute reporting delay to allow for the complexity of booking such trades – acknowledging that if they can be reported sooner, then they should be. The spirit behind this answer is that all trades, including package trades, should be reported as close to real time as technically possible, unless they benefit from a deferral as detailed in the consultation paper on the grounds of their liquidity, risk calibration etc. A short technical delay recognises the complexity of booking the individual components of a packaged trade. This is not a deferral per se, but rather a permissible delay of reporting trades that would otherwise be subject to real time transparency to recognise the operational complexity of booking package trades.

**Q13: Are there types of transactions other than packages that should benefit from a deferral irrespective of their sizes?**

Wherever multiple trades have to be negotiated and booked, creating additional operational overheads, these should benefit from the 15-minute delay. As above, we believe that the principle is that all trades should be reported as close to real time as technically possible, unless they benefit from a deferral as detailed in the consultation paper on the grounds of their liquidity, risk calibration etc.  Trading venues process a lot of complex products. Some transactions will take a period of time to book by virtue of their complexity. This is not a deferral per se, but rather a permissible delay of reporting trades that would otherwise be subject to real time transparency to recognise the operational complexity of booking these trades.

**Q14: Which of the two models do you think can give better calibration of deferrals for bonds and derivatives?**

Our member's preference is for Model 2 but with longer deferrals for large trades and smaller real-time size thresholds for GBP Swaps.

**Real-time transparency and calibration of deferrals**

**Q25: Do you agree with the approach and methodology used to set the thresholds and the lengths of deferrals?**

Our members welcome the FCA's analytical approach to setting the thresholds and the length of the deferrals, however are wary of taking a too simplistic approach when looking at average daily notional traded as a measure of liquidity. Our members note the following factors should be taken into consideration when looking at ADV and to determine when a liquidity provider can trade out of their risk:

- Volume is not evenly distributed throughout the day or week.
- Not all trades in a given bucket are offsetting – e.g., the 5y-10y bucket is too wide for approximately setting a threshold/deferral given the substantial differences between a 6y and a 10y interest rate swap.

- Unlike SONIA, SOFR, ESTR and Fed Funds (all of which are overnight indices), there are four traded EURIBOR index tenors (1 month, 3-month, 6 month, and 12 month). Volume data across the different EURIBOR index tenors should be analysed as liquidity profiles are significantly different; such an analysis in the context of a wider review would likely indicate that 1 month and 12 month EURIBOR should be allocated significantly different thresholds/deferrals or be excluded from the transparency regime altogether due to significantly lower volumes relative to the most liquid EURIBOR index tenor (6 month).

- Only notional volume that is price forming should be considered (e.g., new trade notional volume resulting from compression should be removed).

- In any given period, trading volume may not be offsetting (particularly in more volatile or stressed periods) and a liquidity provider will not have access to all liquidity that is trading.

- The notional ADV includes relative value curve trades that are offsetting where the additional risk being traded (and that can be interacted with) is much smaller than the notional.

**Q26: Do you agree with the proposed deferrals and associated thresholds in the 2 models?**

Our member's preference is for Model 2 but with longer deferrals for large trades and smaller real-time size thresholds for GBP Swaps.

Concerns our members have on the proposed framework is where:

- Trade publication gives away information while the liquidity provider is still on risk. A cap size is helpful in masking a liquidity provider's positioning but has limitations as even just publishing price of a trade gives away direction and reveals positioning.

- Pricing to clients is a function of a liquidity provider's cost of exiting risk – and if this is made more challenging – this would negatively impact pricing provided to clients.

To illustrate these points for GBP swaps – UK interest rate futures volumes indicate what sizes can reasonably be hedged real-time in the market. When a liquidity provider trades a swap, the first hedge is maturity matched in the futures contract. In GBP, there is only one liquid futures tenor point (10y). Looking at 10y Gilt Futures volumes trading throughout the day and assuming a liquidity provider can access roughly 10% of this volume without moving the futures market price, then this would equate to approximately £25m notional in 10y GBP swaps. To propose a more suitable framework based on where a GBP swaps liquidity provider could hedge with 10y Gilt Futures, without negatively impacting their hedging costs (and therefore their pricing to clients), then the real-time thresholds should be roughly one third of what the FCA proposes (i.e. 25m in 10y GBP swaps) across all tenor buckets. The thresholds for larger trades should also be scaled accordingly. These thresholds would enhance the transparency in market whilst not negatively impacting liquidity provision.

We would also note that the proposed deferrals and associated thresholds is significantly impacted by the scope. If the scope continues to include, as is proposed, broken dated swaps, then the thresholds are significantly problematic.

To illustrate, in the Sterling market, 15 tenor points make up (roughly) 85% of all notional traded. 3,238 tenor points have traded once or more in a 6-month period. Of those 3,238, 2,897 have traded less than 10 times in a 6-month period, and of those 2,897, some 1,158 tenors traded just once in a 6-month period. As most of the activity is in benchmark tenors, a liquidity provider will often hedge their position in a broken dated swap with a benchmark tenor swap thereby leaving additional residual basis risk for the liquidity provider to hedge. Also, including these illiquid tenor points in the scope of transparency makes the output of the transparency far more challenging to decipher – the information published would potentially be misleading as it relates both to liquid and illiquid trades. Inclusion of information on illiquid trades will skew the information on liquid trades unless the data is broken down so that it is clear which information relates to liquid and which to illiquid trades. Members question the value of transparency in these illiquid cases, for the same reasons that the FCA is not seeking to impose transparency obligations in connection with other illiquid trades.

**Broken tenors**

**Q27: Do you agree with the approach and methodology used to set the thresholds and the length of the deferrals?**

We note that the FCA propose including swaps with broken dates within the scope of Category 1 instruments. Broken dated swaps, are by definition bespoke and illiquid, therefore our members view has always been that there is limited benefit to the market by making these instruments transparent, indeed, there could be considerable downside if the inclusion of broken dated swaps were to make it harder to gain a clear and transparent picture of the market. In principle, our members welcome the additional measures the FCA propose to preserve the anonymity of transactions, such as the rounding of the notional amount and tenor, and (under Model 2), the volume cap. The broken dated swap maturities reported should be rounded appropriately, in part to ensure that there is no additional information revealed about potentially less liquid bond products with longer deferrals via a swap vs bond trade. Appropriate rounding should also take into account the fact that rounding should be larger (into wider buckets) as maturities increase.

However,

(1) the notional rounding to the nearest unit is insufficient to preserve anonymity but we would note that the FCA is considering something similar to the CFTC rules in this regard, where the notional is rounded to the nearest benchmark notional depending on the size of the trade. This

is complex to implement at a firm-by-firm level and we understand that under the CFTC rules the rounding is performed by the SDR.

(2) the tenor rounding will, depending on how it is implemented, make broken dated swaps look like vanilla benchmark swaps thus reducing data quality and price transparency. It would be better to exclude broken dated swaps from the regime, and

(3) we have residual concerns over the complexity of this and the fact that market participants may struggle to apply this consistently, impacting data quality. In the US the rounding and capping is performed once by the SDR rather than individual market participants each applying the rules prior to submission.

To avoid the complexity of the CFTC's 9 buckets for rounding, a simpler approach could be to round to the nearest million if under £50m, nearest £10m if over £50m and under £250m and nearest £50m if over £250m, subject to capping.

**Q28: Do you agree with the proposed deferrals and the associated thresholds?**

Our members view on the proposed deferrals and associated thresholds is significantly impacted by the scope. If the scope continues to include, as is proposed, broken dated swaps, then our members consider that the thresholds are significantly problematic.

To reiterate, in the Sterling market, 15 tenor points make up (roughly) 85% of all notional traded. 3,238 tenor points have traded once or more in a 6-month period, and of those 3,238, 2,897 have traded less than 10 times in a 6-month period and of those some 1,158 tenors traded just once in a 6-month period. As most of the activity is in benchmark tenors, a liquidity provider will often hedge their position in a broken dated swap with a benchmark tenor swap thereby leaving additional residual basis risk for the liquidity provider to hedge. Also, including these illiquid tenor points in the scope of transparency makes the output of the transparency far more challenging to decipher. – the information published would potentially be misleading as it relates both to liquid and illiquid trades. Inclusion of information on illiquid trades will skew the information on liquid trades unless the data is broken down so that it is clear which information relates to liquid and which to illiquid trades. Members question the value of transparency in these illiquid cases, for the same reasons that the FCA is not seeking to impose transparency obligations in connection with other illiquid trades.

**Q29: Do you agree that the same thresholds shall apply to benchmark tenors and broken dates?**

No, we do not agree that the same thresholds should apply to benchmark tenors and broken dates, for the reasons stated above.

We do not believe that broken dated swaps should be within the scope of transparency at all.

**Credit default swaps**

**Q30: Which model do you think better calibrates transparency and the protection of liquidity for large trades? Please explain.**

For Category 1 credit default swaps, our members prefer Model 2, because of the use of a volume cap.

**Q31: Do you agree with our proposed LIS thresholds and length of deferrals for index CDS? If not, please explain why.**

Yes, our members agree with the proposed LIS thresholds and length of deferrals for index CDS. They are appropriate for the scope of CDS instruments within Category 1.

**Review of the new transparency regime**

**Q32: Do you agree with our proposed approach of implementation followed by review and potential revision?**

As detailed in paragraph 1.1, the FCA propose to give firms an implementation period of one year after the finalisation of the FCA rules. Members do not support an 'ex ante' application date – the rules should be finalised completely before the clock starts ticking. This would prevent members having to rush the implementation if the final rules come in late.

We would want to ensure that the implementation period for firms starts after the finalisation of both the FCA and trading venue rules. This is important, as we would not want to see firms being left with a very short implementation period for Category 2, once trading venues have finalised their deferral regimes (and we note that for most trading venues any rulebook changes involve a process of consultation with market participants, which also takes time to implement – these are not necessarily changes that trading venues can make quickly following entry into force of the FCA rules).

We would encourage the FCA to streamline the entry into force of the new transparency regime in MAR 11 with any associated changes (for example, to transaction reporting and FIRDS reporting, and to the extent possible, with the implementation of any other major global standards) to avoid firms incurring costs in implementing the new regime, only to make further changes to their systems shortly thereafter.

We understand that the FCA is working to a set timescale for bonds, given the bond CTP. We would ask that the work is phased: that the bond regime is introduced before the derivatives regime and more time is given to the derivatives regime.

On the review and revision, we do not believe six months is long enough to assess the functioning of the new transparency regime. We believe that 18 to 24 months would be more appropriate, as it would give more time for both the regulated entities and the regulators to assess the full functioning of the regime. For instance, the changes to MiFID/R transparency rules in the past took approximately five years to have full effect.

However, we welcome some flexibility to the assessment of the rules by the FCA before the official review period begins. For instance, we acknowledge that an emergency situation may arise when the FCA may need to take swift action to rectify an emerging issue in the markets.

**Q33: Do you agree with how we intend to supervise the change from the current regime to the new one? If not, please explain why.**

As of the implementation date of the changes being made, we are in favour of all transactions being reported in line with the new requirements regardless of when they were executed. It is a cleaner and less confusing approach to fully move over to the new regime rules rather than supporting two versions of the regime at the same time. It is vital reporting entities know and understand the rules they are following.

**Q34: Are there other issues that we should have regard to in relation to the change to the new transparency regime.**

We note that the Wholesale Markets Review (5.16) asked for views regarding reverting to the pre-MiFID II situation, whereby trading venues calculated LIS thresholds for exchange traded derivatives (ETD) post-trade reporting, in conjunction with the FCA setting out principles for trading venues. The Policy Statement tells us that the few respondents that engaged with this question were generally supportive, with one respondent raising concerns that this might create unfair competition between trading venues and systematic internalisers (SIs), and among trading venues themselves.

ISDA note that the FCA now propose in CP23-27 that, for category 2 derivatives (ETDs, all other OTC derivatives, SFPs and emission allowances traded on trading venues not falling within Category 1), the trading venues and RIEs will be expected to provide adequate pre- and post-trade transparency in relation to all transactions executed under their systems. Trading venues will be able to calibrate the level of transparency.

ISDA firstly expresses surprise that proposals which originally pertained to ETDs are now being extended to OTC derivatives, without prior consultation. It is the preference of many of our members that certain OTC derivatives are subject to the FCA transparency rules as detailed in Category 1 and that a second category is confined to ETDs. Should OTC derivatives that are traded on a trading venue be included in Category 2, members express a strong preference for consistency and alignment across the trading venues. The FCA should produce a minimum standard by which each trading venue should comply with for OTC derivatives. Regardless, the transparency regime for Category 2 should never be more transparent than that for Category 1: the minimum length of deferral a trading venue can impose must always be greater than the maximum Category 1 deferral.

We believe that venues should not have discretion over the calibration of the transparency regime for OTC derivatives and we explore ways of working with market participants and the FCA in our Executive Summary above. ISDA represents a diverse membership, including trading venues, and we are conscious that generally, they will seek to work collaboratively with their members on this, but, nevertheless, at a minimum, we would want to ensure that the FCA rules require trading venues to consult with their members before setting the transparency requirements and therefore the FCA should produce a minimum standard by which each trading venue should comply with for these instruments. For example, this would include ensuring some level of consistency of deferrals across products, the requirement on venues to consult with their members/users before making substantive changes, and ensuring reasonable implementation times.

We refer to page 148 (in Annex 6) and 11.5.2 R (3) which states that a trading venue operator must establish, implement and maintain an internal process or rules for determining the applicable deferral size thresholds, durations and type of post-trade transparency information, the publication of which it will defer, under MAR 11.5.2R(1), in respect of category 2 instruments. We also note 11.5.2 R (4) that a trading venue operator must publish in its rulebook the rule or processes it adopts to fulfil MAR 11.5.2R(3) before it implements them.

The factors that trading venue operators must have regards to in determining the appropriate size thresholds as part of their pre-trade waiver considerations are set out in MAR 11.3.4 R(1) to (5) (page 144 of the consultation, page 16 of 38 within Annex 6). The same factors are brought into post trade in MAR 11.5.2R(2). These are factors such as the level of liquidity and requires the venue to have regards to disincentivising effects.

We are concerned that there is risk that different trading venues may set different transparency requirements for the same instrument when it comes to OTC derivatives. As well as potentially creating additional administrative and operational burdens for firms accessing those venues, it may also make the UK less competitive internationally, as incoming firms would need to comply with multiple transparency regimes rather than a single regime (as is the case in other jurisdictions). As far as is possible, we would ask that the rules from various trading venues are consistent (see our Executive Summary, above). We would ask that Category 2 (for example, the inclusion of OTC derivatives traded on a trading venue, if applicable, and any distortions due to the inconsistent application of transparency by venues) is reviewed by the FCA as part of the review of the new transparency regime set out in 6.58-6.60 of the consultation.

**Exemptions from post-trade reporting**

**Q37: Do you agree with our proposed amendment of the exemption from post-trade reporting for give-ups and give-ins?**

Yes, we agree with the proposed amendment of the exemption from post-trade reporting for give-ups and give-ins.

**Q38: Do you think guidance to clarify further the types of give-ups and give-ins that can benefit from the exemption from post-trade transparency is required, and, if so, what issues do you think it should cover?**

No. The definition is adequate as it stands.

**Q39: Do you agree with the deletion of point d) from Article 12 of MiFID RTS 2? If not, please explain why.**

Yes, we agree with the deletion of point (d) from Article 12 of MiFID RTS 2 which provides for an exemption for 'transfers of financial instruments such as collateral in bilateral transactions or in the context of a central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP' on the basis that this is already addressed by Article 2(5)(b) of RTS 22 (which provides for an exemption for 'a contract arising exclusively for clearing or settlement purposes').

We understand that the FCA proposes this deletion to avoid duplication, rather than to restrict use of the exemption.

However, the FCA specifically state that it should not restrict the use of other types of transactions in Article 2(5) of RTS 22 (which would cover off the collateral in bilateral transactions element of the exemption). We seek clarification on this as it is not clear that transactions entered into as part of the default management process of a CCP would be 'exclusively for clearing or settlement purposes'.

**Q40: Do you agree with introducing an exemption for inter-affiliate trades?**

Yes, we agree with introducing an exemption for inter-affiliate trades.

**Q41: Do you agree with our proposed definition of inter-affiliate trades?**

Yes, we agree with your proposed definition of inter-affiliate trades.

**Content of post-trade information: fields and flags**

**Q42: Do you prefer to remove the trade reporting field 'Instrument identification code type' and to include a requirement for trade reports to report on the field 'Instrument identification code' using only an ISIN code format, or retain the reporting on this field? Please explain your preferred approach.**

We support the removal of the field 'Instrument identification code type' and have two separate fields for UPI and ISIN codes instead. Either the UPI or ISIN field would be populated thereby removing any need for the 'Instrument identification code type' field.

**Q43: Do you agree with our proposal to introduce the new field 'Unique Product Identifier'? If not, please explain why and set out your preferred approach to the identification of derivative instruments.**

Yes, we agree with your proposal to introduce the new field 'Unique Product Identifier'.

**Q44: Do you agree with our proposal to set the scope of the use of UPI to OTC derivatives? If not, please describe the scope of instruments to which you would prefer for it to apply.**

Yes, we agree with this scope.

**Q45: Do you agree with our proposal to introduce the additional data fields enhancing the UPI to identify an instrument? If so, please detail what data fields additional to the UPI should be included under the trade reporting requirement.**

Yes, we agree that the proposed additional data fields should be introduced.

As per the proposal that is:

1) The effective date and expiry date[2]. The combination of Effective Date, Expiry Date and the existing 'Trading Date and Time' field will allow the tenor of the contract to be derived.

*Note*:

Market participants wishing to consume transparency data are interested in (quickly) understanding the tenor of OTC derivatives instruments (among other trade attributes) in the course of their investment and risk management decision-making.

However, we understand that most market participants that would be likely to be Designated Reporters under MIFIR do not maintain a 'tenor' field in their booking systems (in the main because the term 'tenor' is not included in ISDA definitions and is not part of the legal contract). As such, support for the additional fields listed above (in particular effective date and expiry date) is underpinned by the belief 1) that the tenor of contracts covered in transparency requirements can easily be (and typically is) extrapolated by reference to the time stamp in transaction-level data, the 'termination date' (or 'expiry date' or 'maturity date') field and (in the event forward-starting swaps are eventually included in scope of the transparency regime), the 'effective date' field and that 2) this approach would be less operationally disruptive (overall) for such firms actually performing reporting requirements. The tenor could then be calculated by APAs for purpose of public dissemination. We believe that this approach would

[2] The expiry date as an additional field to the UPI would not cause the issues associated with the expiry date field as part of the ISIN.

also make it less likely that tenor would be misreported, and would be better for data quality, in our view.

The optimal methodology of reports to and by APAs could be addressed through some combination of technical legislation/regulatory guidance and/or legal agreements between APAs and reporting parties. For example, it would be important that reporting parties understand that reported expiry dates must be unadjusted dates, in line with the existing market practice for swap bookings, to ensure that tenor is accurately derived (see the last paragraph of this answer).

2) The spread on the floating leg of IRSs. The spread for certain IRS trades containing a floating leg is considered a price-impacting field and therefore warrants inclusion. As this is only relevant for a subset of IRS, a value of 0 should be allowed where no spread exists.

3) Upfront payments forming part of CDS transactions. The up-front payment is considered a price-impacting field and therefore warrants inclusion (only relevant for CDS). Note: this field would not be necessary if the FCA was to publish similar guidance to that published by ESMA on 8 January (Manual on Post-Trade Transparency under MIFID II/MIFIR) to the effect that 'quoted spread' should be reported as price in relation to CDS reporting.

4) Identification of the clearing house in which the instrument is cleared. This field will provide visibility of differing prices between CCPs.

We are also supportive of addition of ISO 4914 (UPI) as a data element within FIRDS, to be mandatory for all OTC derivatives products. This change would allow all regulatory regimes to have access to the UPI code directly. It would also facilitate a potential future mandate for use of the UPI as the basis for transaction reporting, should such a step pass cost-benefit assessment.'

We welcome the FCA's recognition that ISINs are less suitable for OTC derivatives identification than they are for other types of financial instrument e.g. equities and bonds. We note that the FCA suggests that that ISINs should be retained (alongside UPIs) as an instrument identifier for trade reports, including for OTC derivatives, for purpose of 'backwards compatibility'.

We also welcome the broad recognition of the expiry date ('rolling ISIN') issue (referred to in paragraph 8.15 of the FCA consultation) and of the need to remedy this by supporting removal of the expiry date from the OTC derivative ISIN.

As such, if the FCA retain ISINs, we believe that this should be subject to the modification of the OTC derivative ISIN to remove the 'expiry date' field.

Unlike ANNA-DSB (as we understand their position) we do not believe that replacement of the expiry date with a 'tenor' field would be the best way to ensure better quality data than in evidence at present, nor the most efficient and cost-effective means of transition to use of a modified ISIN (for the reasons explained above).We believe the most effective way of deriving the tenor would be examine the trade timestamp, effective date and expiry date.

**Q46: Would the introduction of the UPI have an impact upon the costs incurred by your firm? If so, please explain how and try to estimate the impact.**

The UPI has been developed as an international data standard and is being implemented across multiple jurisdictions. As such, the industry has already incurred costs to support the UPI and therefore introducing this identifier to improve transparency is an expansion of processes already in place. Indeed, UPI is a requirement under the EMIR Refit reporting rules and with MiFIR being a subset of the EMIR scope, firms should already support a UPI for all transactions to be reported under MiFIR.

A potential cost saving would be if UPI's were to fully replace OTC ISIN's in the future, as this would move towards the UPI being the only identifier required across jurisdictions rather than supporting both ISIN and UPI.

**'Price' and related fields**

**Q47: Do you agree with the proposed changes to the 'price' field and related reporting fields? If not, please explain why.**

We agree that numerical values only, together with the proposed addition of the new 'price conditions' field makes sense.

**Q48: What are your views about the introduction of a 'price conditions' field?**

We support the introduction of a 'price conditions' field to reflect when a price is not available or not applicable. This is also consistent with the approach taken for MiFIR in the EU.

**Q49: Do you agree with our proposal that we should work with industry to develop guidance on the reporting of prices under post-trade transparency? If not, please explain why.**

Yes, we agree that developing guidance on reporting will achieve the best results when carried out alongside, and with input from, the industry. Input from the industry is essential.

**Measure of volume**

**Q50: Do you agree with our proposal to amend Table 4 of Annex II of RTS 2? If not, please explain why and set out your preferred approach to refer to the measure of volume.**

Yes, we agree with the proposal to amend Table 4 of Annex II. We note that the content of the table covers cash instruments.

**Q51: Do you agree with our proposal to introduce the new field 'LEI of clearing house'? If not, please explain why and set out your preferred approach to reporting the clearing status of trades.**

Yes, we agree with the introduction of the new field 'LEI of clearing house' as this field will provide visibility of differing prices between CCPs and will identify why prices for two trades in the same instrument differ.

**Q52: Do you agree with our proposal to delete the field 'Transaction to be cleared'? If not, please explain why.**

Yes, we agree with the proposal to delete the field 'Transaction to be cleared'. We note however, that there is a potential edge case where a foreign CCP may not have an LEI.

**Flags**

**Q53: What are your views about the introduction of a portfolio trade transactions flag 'PORT'?**

We support the introduction of a portfolio trade transaction flag provided there is sufficient clarification on how the flag is to be applied, (although we note the CP already includes good guidance to this effect).

**Q54: Do you agree with our proposal to delete the agency cross 'ACTX', non-price forming transaction flag 'NPFT', illiquid instrument transaction 'ILQD' and post-trade SSTI transaction 'SIZE' flags? If not, please explain why and the uses of each flag.**

The CP explains none of those four flags will be required so we agree with the proposal to delete them as this will simplify the regime.

We take the opportunity to highlight however, that there may be a need to introduce additional flags. See Q56 for further details.

**Q55: Do you agree with our proposal to delete all of the supplementary deferral flags for post-trade transparency with the exception of the volume omission 'VOLO' and full details 'FULV' flags? If not, please explain why and describe your preferred approach.**

We agree with the proposal.

**Q56: Are there any other flags that we should consider introducing, removing or amending?**

We do not propose any additional flags now, but we strongly recommend that there is an option to introduce new flags in the future, as and when required.

**Q57: Do you agree with our proposal to amend Table 1 of Annex II of RTS 2? If not, please explain why and set out your preferred approach to the symbol table for the format to be populated for post-trade transparency trade reporting.**

Yes, we agree with this proposal. This would be required as part of the introduction of UPI and LEI.

**Q58: Do you agree with our proposal to delete Annex IV of RTS 2 in its entirety? If not, please explain why.**

Yes, we agree with the proposal to delete Annex IV of RTS 2, given the transparency calculations will be discontinued. We note that the critical point is for the FCA to have access to relevant and sufficient data to run recalibrations in the future.

**Definition of a systematic internaliser (SI)**

**Q59: Do you agree with our proposed glossary definition and PERG guidance? If not, please explain why.**

We support the UK Finance response. We note that the changes proposed by the consultation paper could result in a change in the number of firms that are SIs. Our members note that there is very clear guidance which distinguishes SI trading from the trading venue perimeter and would request that the FCA clarifies that the same guidance and principles will continue to apply to firms that cease to be SIs as a result of the changes to the SI definition proposed in the new rules, ensuring that such firms are not inadvertently brought into the trading venue perimeter.

We support the drafted wording made by UK Finance to the PERG guidance to make it clearer that whether or not a firm carries on SI activity would depend on how its relevant off-venue trading compares to the overall size of the market in the relevant asset class (rather than on how the individual firm's own off venue trading compares to its total (on and off-venue) trading in the relevant asset class).

We also note that following the above changes to the SI definition and the PERG guidance, it may be better for the FCA to rephrase question 10a in PERG to broadly refer to the SI definition rather than just the 'by way of business' limb of the SI definition.

**Q60: Are there any further comments you wish us to consider while finalising these proposals? If so, please include here.**

For the avoidance of doubt, we would welcome the clarification that the technical trades resulting from post trade risk reduction (PTRR) services are exempt from the OTC derivatives transparency requirements. It is important that these non-price forming technical transactions entered into such that market participants are able to achieve optimal portfolio risk reduction are not published in the public transparency regime as this is confusing and misleading and detracts from price discovery.

Thank you for the opportunity to comment and we remain at your disposal for further engagement.

Contacts:

Fiona Taylor, Head of UK Public Policy, ftaylor@isda.org

Andrew Bayley, Senior Director, Data and Reporting, abayley@isda.org

Jonathan Martin, Head of Derivatives Products Management, jmartin@isda.org